

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 179 of 2005(B)

**(CC.61/1989 OF ADDL.CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFECES),
ERNAKULAM).**
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PETITIONER/ ACCUSED:

**R.BHARATHAN, ABKARI CONTRACTOR,
SIVADASA MANDIRAM, ERAVIPURAM,
QUILON.**

**BY ADV. SRI.C.KOCHUNNY NAIR,
ADV. SRI.S.ARUN RAJ.**

RESPONDENT/ COMPLAINANT:

**ASSISTANT COMMISSIONER OF INCOME TAX,
INVESTIGATION CIRCLE,
AAYAKAR BHAVAN, KOWDIAR,
TRIVANDRUM-3.**

**BY PUBLIC PROSECUTOR,
ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES),
ADV. SRI.GEORGE K. GEORGE, SC FOR I.T.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 25/10/2007,THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.KOSHY, J.

Crl.M.C.No.179 OF 2005

Dated 25th October, 2007

ORDER

Petitioner was originally imposed with a penalty for concealment of income and he was prosecuted on the very same charges for offences under Sections 276C(1) and 277(1) of the Income Tax Act. But, the penalty was set aside by order of the Commissioner of Income Tax (Appeals) dated 26.8..92. It was affirmed by the Appellate Tribunal also. Evidence in criminal prosecution is more onerous than imposition of penalty in the departmental adjudication. Hon'ble Apex Court in **K.C.Builders and another v. Assistant Commissioner of Income Tax** ((2004) 265 ITR 562) held that if penalty imposed for concealment is set aside, prosecution will not lie. Therefore, on the basis of the above decision petitioner wants to quash the proceedings. The above decision was followed by this court in identical situation in **Edayanal Constructions and another v. Income Tax Officer and another** ((2007) 288 ITR 134 (Ker.)). In view of the above decisions, I set aside the prosecution proceedings in C.C.No.61 of 1989 before the Additional Chief Judicial Magistrate (Economic Offence), Ernakulam. It is submitted by the Income Tax Department that reference from the judgment of the Tribunal is pending. The alleged concealment of

income was in 1984-85. If the proceedings are reversed in the reference regarding penalty, the department is at liberty to take appropriate action.

The Crl.M.C. is disposed of accordingly.

J.B.KOSHY
Judge

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